

Memorandum

To: Task Force to the Future for Growth and Development

From: Land Preservation/TDR Workgroup

Date: June 29, 2009

Subject: Interim Transferable Development Rights Report

The Task Force's December 2008 Report included Recommendation 18 which states:

"MDP should convene an inter-agency and inter-governmental workgroup, including State and local stakeholders, to explore the viability of TDR programs at all levels. The workgroup should report back to the Task Force with an interim report by July 1, 2009, and a final report by November 1, 2009."

The following outline details the work that the Land Preservation/TDR Workgroup will focus on as it pertains to TDRS.

Making the most of Maryland's Transferable Development Rights Program Opportunities

Introduction

In recent years, a number of reports have been completed on transferable development rights programs in Maryland and elsewhere. The components of a successful program are already known. Rather than adding one more report to the list, we want to use this effort to compile these reports into one place. The Workgroup's own report will then fill in some of the holes. This will provide a resource that we hope will assist local jurisdictions in the following ways:

1. Provide one stop shopping for information to help jurisdictions that do not currently use this land preservation technique to design a program that will work best for their situation.
2. For those that have a program that isn't working well, the report will let them learn about other concepts and features that are working in other places.
3. Have a discussion about the feasibility of inter-jurisdictional TDR programs (between Counties and their respective municipalities) or a statewide program (between one or more Counties and another County or between one or more Counties and a municipality in another County).

This information is critical as the State and local governments work to protect rural lands for their rural values while stretching scarce preservation dollars farther and creating attractive, mixed use, higher density places inside PFAs. New opportunities for a preserved land base are also rising, including the need for areas that can capture carbon dioxide (a global warming gas) and the growing recognition of the major role that Maryland can play in east coast agriculture security.

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Background Information

The Feasibility of Successful TDR Programs for Maryland's Eastern Shore, by Grant H. Dehart and Rob Etgen, published by the Maryland Center for Agro-Ecology, Inc.,
<http://agroecol.umd.edu/files/Dehart%20Full%20Report%20HRHCAE%20Pub-2007-01.pdf>

Summary: This is probably the most extensive study of Maryland TDR programs to date.
Key resources are in this report.
Check list for a successful program reproduced in full.

Governors fellows' report: *Transferable Development Rights Legislation: A Proposal for Solving Maryland's Land Use Problems*. Governor's Summer Internship Program, August 8, 2008

Summary: This report provides an excellent summary of current program in Maryland including case studies of four county programs. In addition, this report looks at New Jersey's very successful programs. Key resources in this report.

List of Counties and their TDR programs [attached]

Next Steps

- Increase and expand the membership of the Workgroup.
- Examine the Local Options for Overcoming Obstacles, such as lack of demand in receiving areas, NIMBYism toward increased density in receiving areas, lack of political will to implement an effective program, etc.
- Options for inter-jurisdictional TDRs.
- Opportunities for beginning a Statewide TDR Program:
 - TODs
 - BRAC Zones
- Prepare for emerging ecosystem service market opportunities (carbon sequestration, habitat banking, etc.) using tools, such as the Bay Bank, that can complement existing and new TDR programs.

Summary of County TDR Programs

County	On-Site density	TDR Sending Rate	Base density in Receiving Area	Density in Receiving Area w/TDR	Acres Preserved	Notes
Calvert	1:20	1:1	Forest Cons. Dist/Rural Pres. Dist 1:20 Rural Comm. Dist. 1:20 Rural Comm. w/in 1 mile town Center 1:20 R-1 1:4 R-2 1:4 Town Center 1:1	1:10 1:4 1:1 4:1 4:1 14:1	12,142 (June 2007)	Downzonings in 1999 and 2003, reduced density from 1:5 to 1:20 in Priority Protection areas. Receiving areas were also downzoned.
Caroline	4 lots	1:15	4 lots plus 1:15	Up to 50 lot subdivision at 1:1	345 (2005 data)	“The first Caroline County TDR program was adopted in 1989 as a part of comprehensive rezoning. In the following sixteen years, only three or four TDR transactions were conducted, protecting 345 acres.... On March 21, 2006 the Caroline County Commissioners...establish[ed] a new [TDR] program, which became effective April 1, 2006.”* 6,000 acre receiving area north of Denton
Cecil	NAR 1:10 SAR 1:20	NAR 1:5 SAR 1:3	Suburban Residential: w/o community facilities 1:1; with community facilities 2:1; PUD 4:1 Development Residential: w/o community facilities 1:1; with community facilities 4:1; PUD 6:1 Town Residential: w/o community facilities 1:1; with community facilities 4:1; PUD 6:1	SR 4:1 DR 12:1 TR 6:1		Sending areas were downzoned when TDR program created. NAR was 1:5 (1:3 w/cluster) and SAR was 1:8 (1:5 with cluster).
Charles	1:3	1:3	See Below	See Below	4,800 (June 2008)	
Montgomery	1:25	1:5	Residential RE-2/TDR 1:2 Residential RE-2C/TDR 1:2 Residential RE-1/TDR 1:1.1 Residential R-200/TDR 2.18:1 Residential R-150/TDR	4:1 2:1 2:1 11:1	51,830 (June 30, 2008)	

			2.18:1 Residential R-90/TDR 4.84:1 Residential R-60/TDR 7.26:1 Residential R30/TDR 14.5:1 Residential R20/TDR 21.8:1 Residential R10/TDR 43.5:1	6:1 28:1 28:1 40:1 50:1 100:1		
County	On-Site density	TDR Sending Rate	Base density in Receiving Area	Density in Receiving Area w/TDR	Acres Preserved	Notes
Queen Anne's	AG 1:8 Country-side 1:20 CS/Non Crit) 1:5 CS Crit. 1:20		Countryside outside Critical Area 1:5 Countryside in Critical Area 1:20 Estate 1:2 Suburban Estate 1.25:1 Suburban Residential 2:1 Suburban Comm. 3.2:1 Village Ctr. w/sewer 3.2:1 Village Ctr. no Sewer 1.25:1 Village Ctr. Apt. 10:1 Town Center 3.2:1 Town Center Apt. 10:1 Stevensville & Grasonville SMPD & GPRN 3.5	1:4 1:1.6 1.5625:1 2.5:1 4:1 4:1 1.56:1 4:1 4.375:1	2,644 (as of 2009)	“[T]here have been no transfers outside of the Critical Area since 1994, when TDR receiving areas were first limited to zoning districts in designated growth areas. A competitive Non-Contiguous Development (NCD) program allows density transfers between non-contiguous lands in common ownership. Organized citizen opposition to development both inside and outside of growth areas has led to reductions of development proposals to densities lower than existing zoning, so there is no market for TDRs.”*
St. Mary's	One lot by right		Rural Pres. Dist: One lot Residential Low. 1:1 Residential High 10:1 Corridor Mixed Use 1:1 Downtown Core Mixed Use 20:1 Res. Neighborhood Conserv. 1:1	1:5 5:1 20:1 15:1 20:1 2:1	2,967 (2005 data)	Rural to rural transfers allowed, but not into Rural Legacy areas. TDRs can be used to increase commercial sq. footage . “Under the 2007 amendment, to achieve the allowed density, a landowner can have one lot by right and may obtain approval for additional lots at 1 dwelling per 5 acres with purchase of a development right (TDR) from 5 acres of off-site vacant RPD land or retirement of a TDR from a vacant buildable lot for each lot created. The landowner may opt to utilize TDRs from his own land (1 dwelling by right plus an additional 1 dwelling per 10 acres of land area in the parcel). (From St. Mary's Comprehensive Plan.)
Talbot	3 lots plus 1:20			(RC) 1 to 20 (RAC) 1 to 10		“[The] 1991 zoning and TDR ordinance was proposed to be amended to establish new zoning districts, reduce the overall development potential in rural areas, and require mandatory clustering with TDRs. The amendments were expected to

						increase the demand for TDRs, but they were rejected by the County Council in September 2006. Rural-to-rural TDR transfers are continued unless municipalities are willing to accept them to preserve greenbelts.”*
Wicomico	1:15, 1:3 with cluster	1:3		Ag-Rural Dist. 1:3 Village Cons. 1:5 Res. R-8 Cluster 5.445:1 Res. R-8 PUD 7.2:1 Res. R-15 PUD 4.36:1 Resident. (R-20) PUD 4.36:1	1:2 1:3 6.05:1 7.42:1 7.26:1 6.22:1	
Worcester						

Charles County: Bonus Densities for Using TDRs in Receiving Zones			
Zone	Type of Development	Units per Acre Base Density	Density With Maximum TDR
Low Density Residential	Cluster	1.00	3.00
	TOD Zone	1.75	3.50
Medium Density Residential	Cluster	3.00	4.00
	Application of a Planned Development—PRD Zone	3.00	6.00
	Application of a Planned Development—MX & PMH	3.00	10.00
	TOD Zone	4.00	8.00
High Density Residential	Cluster	5.00	6.00
	Application of a Planned Development—PRD Zone	5.00	12.00

	Application of a Planned Development—MX	5.00	19.00
	PMH Zone	5.00	10.00
	TOD Zone	15.00	27.50
Core Employment/Residential	Conventional	2.00	15.00
Core Retail/Residential	Conventional	2.00	15.00
Core Mixed Residential	Conventional	2.00	10.00
In the last three Core options, the applicant must purchase one Transferable Development Right for each of the third, fifth, seventh and ninth lot/dwelling units per acres. The sending property is placed under easement after the first right is sold. However, the sender can later buy back at one time all the rights he sold and unencumber his property. This has happened only once in the history of the program.			

* Quotations are from *Report: The Feasibility of Successful TDR Programs for Maryland's Eastern Shore*, Submitted to the Maryland Center for Agro-Ecology, Inc., January 2007. Researched and written by H. Grant Dehart, Land Preservation Consultant, and Rob Etgen, Executive Director, Eastern Shore Land Conservancy. Queen Anne's, page 3; Talbot, page 4. Report also provided many of the zones and densities for other Counties.